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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 547

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner,

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE, ET AL., *Respondents.*

PETITIONER'S REPLY MEMORANDUM

Having placed confidence in Attorneys, Physicians and members of the Catholic Church, in trying to administer and protect the "Constitutional Rights of the Mentally Ill members of the Kehoe Family", your petitioner can well understand the thoughts that were in the minds of those entrusted to investigate and report on the assassination of President John F. Kennedy.

The transcript of the record of the Common Pleas Court, Hamilton County, Ohio, reveals that:

(1) The Reverend William Shaw, one of the principal beneficiaries under the Will in contest, was

long associated with members of the Kehoe Family (Phoebe, Alice, Lucy and Michael) and that, from the time of the death of Lucy, he received successive substantial gifts and legacies from them;

(2) The Reverend William Shaw had knowledge of the value of the estate left by James E. Kehoe, brother of Michael, for the care and comfort of sick members of the Kehoe Family, having conferred from time to time with Frank Altenau, the Administrator of the estates of Alice and Phoebe Kehoe, whose Wills were also previously prepared by Charles C. Boyle and witnessed by his wife, Alvina Boyle. This action was condoned by the Reverend Father Shaw of the Roman Catholic Church as shown by his testimony at the time of the trial. Father Shaw complied with the Precepts of the Roman Catholic Church as set forth in its Canons #1513, 1514 and 1515, thereby depriving your petitioner of moneys, chattels, heirlooms and personal property that should have rightfully been bequeathed to him. As a matter of fact, many of the heirlooms and personal property had been transferred from my father's house in Cynthiana, Kentucky, after his death and these effects really belonged to the petitioner; and,

(3) The only question presented to the Jury was the mental state of Michael Kehoe, while the question of undue influence was wrongfully taken from the Jury by the Trial Judge.

Fortunately, contestant has this opportunity to point out to this Honorable Court that the respondents' brief has not presented a factual statement for consideration. The Respondents' Brief is a repetition of their opening statement to the jury, as to what they hoped, but failed to prove.

The Respondents' Brief consists of a series of untruths, half-truths and no truths at all. An example of such false and misleading statements is found on page four, lines eight and nine, as follows: *"Mike went to Mass and Communion every day of his life".*

Later, on page four, this statement is qualified, to show that Mike was unable to go to mass and communion, during the last twenty-eight days of his life. Thus, this Honorable Court is led to believe that this man, who was born in Elysville, Kentucky, on January 2nd, 1874, assisted at mass and partook of communion a total of eighty seven years and one day.

It can be corroborated by any Roman Catholic authority, that Michael E. Kehoe did not attend mass and receive communion daily during the first seven years of his life.

It is conceded that Michael E. Kehoe resided in St. Louis, Missouri, and roamed the west prior to his breakdown, about 1911, with painter's colic—which the medical profession now realizes tends to result in mental deterioration. It was around this time that he returned to Cynthiana, Kentucky, to be under the care of the Kehoe brothers and sisters, and Dr. MacDowell, the family physician.

Your petitioner, then around the age of twelve, recalls that thereafter during one summer vacation period, his mother made various food dishes, particularly gruel, for Uncle Mike due to his illness. Your petitioner carried the food prepared by his mother to his Uncle Mike almost every day.

Respondents' Brief in opposition to Petition for Certiorari, on page four beginning on line 4, states "The

contestant attended Xavier University, but saw little or nothing of Mike during those years, principally for the reason that contestant resided at the Fenwick or with an Aunt Cavanaugh, and Mike was living out west".

Contestant attended Xavier University in Cincinnati, Ohio during the 1920-1924 period. During that time, he visited his Uncle Mike on an average of at least once a month. Uncle Mike then lived in Cincinnati with his sisters, Ella and Phoebe, and nephew, John G. Fischer—and not "out West", as so deceptively asserted by the Attorney for the Respondents. It was during this period that the Contestant discussed Uncle Mike's physical and mental condition with Dr. Hoppe, an outstanding Neurologist, as well as with his own Surgeon, Dr. Joseph DeCourcey, both of Cincinnati, Ohio.

Similar false misstatements abound in the Respondents' Brief. Space does not permit a review of these statements at this time. However, we repeat that the real picture of Michael E. Kehoe is not as painted in the pages of the original Bill of Exceptions, where the testimony of the witnesses is recorded and available for review—rather than the picture of him as piously painted in the Respondents' Brief.

One of the questions at issue in this case is whether, on August 19, 1959, the date of the execution of the paper purporting to be the Last Will and Testament of Michael E. Kehoe, also known as M. E. Kehoe, he then possessed sufficient mental capacity to make same or was under any undue influence and was not really able to form the purpose and intent to dispose of his property by Will.

The sad lack of normal mental capacity and understanding on the part of Michael E. Kehoe, at the time of his signature to the alleged will is best manifested by its own very unnatural provisions: (1) it strangely fails to include any reference to the normal disposition of the many antiques, heirlooms and mementoes, as listed in the estate's inventory, most of which had been transferred to the Uncle's home from the home of the contestant's father, after his death (many of which he had previously inherited from his father, which rightfully belonged to the contestant), which should normally and naturally have been turned over to the only living legal heir, for whom such items would naturally possess much more sentimental value, for himself and his heirs, than any intrinsic value or low inventory value for the estate; (2) it bequeathed only 5% to the only surviving legal heir, his nephew—who had long been helpful to, and solicitous of the welfare of, his ailing uncles and aunts—notwithstanding the fact that most of such estate had been inherited down through a chain of prior-deceased Kehoe brothers and sisters, with practically no accretion thereto having been contributed by such last surviving Uncle, so that the natural expectancy, of all concerned, would be that most of it should have been bequeathed to the only surviving legal heir, his nephew, the contestant; (3) its peculiar, propitiating provisions (undoubtedly thought up by scheming attorneys), whereby 5% was thereby to go to such nephew's wife, 5% to his only son and 5% to such son's wife—whose affidavits (Exhibits A, B and C) very positively disavow the contentions in the Respondents' Brief and assert agreement with the contestant's Petition; and (4) it would unfairly give a grossly abnormal 80% of such Kehoe-inherited estate

to eight different Roman Catholic Church institutions, purposes and officials.

No right-thinking, normal-minded Uncle would consciously—without some subtle undue influences—have arranged for such a defective, deficient, abnormal and unnatural will, which therefore ought to be declared as null and void.

Moreover, the witnesses adduced by Petitioner proved by an overwhelming preponderance of evidence that, from May 5, 1959, and including December 29, 1959, Michael E. Kehoe did not possess sufficient mental capacity to form the purpose and intent to make a Will. These witnesses were: (1st) his neighbors, the Glandorfs, who were with him much of the time during this period; (2nd) His former housekeeper and nurse, Anne Rivers, who was employed by the Glandorfs and who saw him almost daily; (3rd) His, and the family's financial adviser, Frank Altenau, who saw him on two occasions during this period at Michael E. Kehoe's specific request, for the purpose of making a new Will, and who saw and stated that Michael E. Kehoe could not have made a Will; (4th) Your petitioner (his only nephew and next of kin) and his Wife, Rose P. Kehoe, who knew him closely through the years, and who spent a great deal of time with him in his household; and (5th) his only Grand Nephew, Thomas Prentis Kehoe, whom Michael E. Kehoe failed to recognize on May 5th, 1959 and May 6th, 1959, at the funeral of his sister Phoebe Kehoe.

The only reference to the date of the will, August 19th, 1959, appears on page 4, line 16 of Respondents' Brief. Although their testimony is widespread, covering a period of forty-five years, the period around Au-

gust 19, 1959—very strangely—escapes their witnesses, with the exception of Charles C. Boyle, Executor. They have shunned it lake a plague.

One other thing escapes them. In all the pages of testimony adduced on behalf of the respondents, not one of their witnesses—with the exception of Charles C. Boyle, Executor (who met him on other business)—encountered even one of the witnesses adduced by the contestant, during the period from May 5, 1959, to December 29, 1959.

It is quite significant that they neither denied nor confirmed their existence. The forgetful housekeeper, Margaret Lampe, for example, never saw the Glandorfs or Anne Rivers, although they were almost daily visitors to the Michael Kehoe home; nor did she encounter Thomas and Rose Kehoe on December 28th and 29th, 1959, even though they resided there with their Uncle. The reason is apparent, namely, Margaret Lampe was discharged by Michael E. Kehoe in May of 1959, and was not thre to observe Michael E. Kehoe. (deposition of Gloria Miller Glandorf page 12.)

Finally, the Attorney for Respondents has deceptively undertaken to represent all of the Respondents listed in his Respondent's Brief in Opposition to Petition for Writ of Certiorari, including Rose Prentis Kehoe (in Petition as Rose Kehoe, also known as Rose Prentice Kehoe), Thomas P. Kehoe, also known as Thomas Kehoe, Jr., and Katherine S. Kehoe. Their affidavits in opposition thereto appear hereinafter as Exhibits A, B and C.

Such presumptuousness gives rise to the question as to whether he may also have been similarly presumptuous in representing the viewpoints of the other re-

spondents, without having consulted with each of them, subsequent to their evaluation, if any, of the statements set forth in the Petition for a Writ of Certiorari, which was mailed to each of them by the Petitioner.

The pious picture of the life and actions of Michael Kehoe, painted by the Attorney for the Respondents in his Brief, is not in accordance with the evidence—as is clearly indicated hereinabove as well as in the records of the trial before the Court of Common Pleas.

The physical, psychological and mental condition of the testator, coupled with his religious fanaticism, provided such easy susceptibility to subtle undue influences as to account for the unnatural provisions of his alleged Will, which is so utterly inconsistent with good public policy, as to require it to be declared as null and void.

Respectfully submitted,

THOMAS J. KEHOE,
1904 Rookwood Road
Silver Spring, Md. 20910
Attorney for Petitioner.

Of Counsel:

MILLARD W. RICE,
919 Lakeview Drive
Falls Church, Va. 22040

JOSEPH B. MATRE,
1907 Rookwood Road
Silver Spring, Md. 20910

EXHIBIT A

Re: Thomas J. Kehoe, also known as Thomas Kehoe, Plaintiff-Petitioner

and

Attorney for Plaintiff-Petitioner

vs

Charles C. Boyle, Executor of the Last Will and Testament of Michael Kehoe, also known as M. E. Kehoe, et al, Respondents

Case No. 547

In the Supreme Court of the United States.

Mr. Louis A. Ginocchio, Attorney for the Respondents in the above captioned Case No. 547 in the Supreme Court of the United States, has included my name in the list of Respondents in his "Brief in Opposition to Petition for Certiorari".

Mr. Ginocchio has never had any right to represent me in any way, nor is he now doing so. I disagree with many of the statements in his Brief and agree with all of the statements in the Petition.

At the time the Contest of the Will of Michael Kehoe, also known as M. E. Kehoe, was filed late in August of 1961, I wrote Mr. Robert Jennings, Clerk of the Common Pleas Court, Hamilton County, Cincinnati, Ohio, that I concurred in the suit filed by my husband, Thomas J. Kehoe, also known as Thomas Kehoe, as the nephew and sole heir-at-law of Michael Kehoe, also known as M. E. Kehoe. At that time the Attorneys were John W. Wilke, Esq., Cincinnati, Ohio and Warren E. Miller, Esq., Washington, D. C. They both withdrew from the case in January 1964

and since that time my husband, Thomas J. Kehoe, Plaintiff-Petitioner and Attorney, has represented me.

It is, therefore, requested that my name be removed from the list of Respondents as shown by Mr. Ginocchio.

SEAL /s/ Rose Prentis Kehoe
In "Brief in Petition in Opposition for Certiorari" as Rose Kehoe, also known as Rose Prentice Kehoe.
1904 Rookwood Road,
Silver Spring, Maryland.

Subscribed and sworn to before me this 2nd day of November, A. D. 1964.

/s/ Harriet B. Peckham
Notary Public

EXHIBIT B

Affidavit

State of Georgia
Muscogee County

Now comes Captain Thomas P. Kehoe, also known as Thomas Kehoe, Jr., 171-B Arrowhead Road, Fort Benning, Georgia, and states the following:

Mr. Louis A. Ginocchio, Attorney for the Respondent in the Supreme Court of the United States Case Number 547, has seen fit to add my name to the list of Respondents in the aforementioned case.

At the time of the original Contest of Will I wrote Mr. Robert Jennings, the Clerk of the Common Pleas Court, Hamilton County, Cincinnati, Ohio, advising him that as a beneficiary in the supposed will, I concurred with its contest. This concurrence was based on misgivings as to my great-uncle's sufficient mental capacity to form the purpose and intent to make a will.

Subsequently Mr. Louis A. Ginocchio traveled to Fort Richardson, Alaska, in early 1963 to be present at my deposition made relative to the Contest of Will. From his manner toward me and his actions in repeatedly objecting to my every statement, there was no question in my mind but as to his awareness of my concurrence to the proceedings that had been initiated. Had there been, the tone and substance of my statements during the deposition undoubtedly made my position in contesting the will quite clear to him.

In the proceedings before the Common Pleas Court of Hamilton County, Cincinnati, Ohio, I was initially represented by Mr. John W. Wilke of Cincinnati, Ohio, and by Mr. Warren E. Miller of Washington, D. C. Since January 1964 my interests have been represented by Mr. Thomas J. Kehoe of 1904 Rookwood Road, Silver Spring, Maryland.

FURTHER AFFIANT SAYETH NOT.

/s/ THOMAS P. KEHOE

Sworn to and subscribed before me this 30 day of Oct., 1964. My Commission expires 18 Aug. 65.

/s/ ADDIE B. BOYETT
SEAL *Notary Public*

EXHIBIT C

AFFIDAVIT

STATE OF GEORGIA
MUSCOGEE COUNTY

Now comes Mrs. Katherine S. Kehoe, wife of Captain Thomas P. Kehoe, also known as Thomas Kehoe, Jr., of 171-B Arrowhead Road, Fort Benning, Georgia, and states the following:

Mr. Louis A. Ginocchio, Attorney for the Respondent in the Supreme Court of the United States Case Number 547,

has seen fit to add my name to the list of Respondents in the aforementioned case.

At the time of the original Contest of Will I wrote Mr. Robert Jennings, the Clerk of the Common Pleas Court, Hamilton County, Cincinnati, Ohio, advising him that as a beneficiary in the supposed will I concurred with its contest. This position I still hold today.

In proceedings before the Common Pleas Court of Hamilton County, Cincinnati, Ohio, I was initially represented by Mr. John W. Wilke of Cincinnati, Ohio, and by Mr. Warren E. Miller of Washington, D. C. Since January 1964 my interests have been represented only by Mr. Thomas J. Kehoe of 1904 Rookwood Road, Silver Spring, Maryland.

FURTHER AFFIANT SAYETH NOT.

/s/ KATHERINE S. KEHOE

Sworn to me and subscribed before me this 30 day of Oct. 1964.

My commission expires 18 Aug. 65.

/s/ ADDIE B. BOYETT

SEAL *Notary Public*